Remarks

Claims 1, 2, 4-6, 8-12, 14-19 and 21-23 are pending.

Claims 1, 4, 6, 8, 11, 14, 22 and 23 were amended to recite "said plurality of programs".

Claims 1, 6 and 11 were amended to recite "said plurality of identifiers".

Claims 2 and 12 were amended to recite "said plurality of application programs".

Claims 4 and 14 were amended to recite "said plurality of vendor identifiers".

Claims 6, 11 and 19 were amended to delete typographical errors.

Claim Objections

The Examiner objects to Claims 1, 2, 4-6, 8-12, 14-19 and 21-23 on the ground of informalities.

In order to advance the application to allowance at an early opportunity, Claims 1, 4, 6, 8, 11, 14, 22 and 23 were amended to recite "said plurality of programs", Claims 1, 6 and 11 were amended to recite "said plurality of identifiers", Claims 2 and 12 were amended to recite "said plurality of application programs", and Claims 4 and 14 were amended to recite "said plurality of vendor identifiers". Applicants' attorney maintains the prior position, of record, that these claims do not require such changes under any patent law, rule or procedure, in order to provide proper antecedent basis. The Examiner admits (Office Action, page 34) that the former claims "have antecedent basis" and is apparently requiring an explicit basis without citation of a law, rule or procedure that requires such an explicit antecedent basis.

Claims 6, 11 and 19 were amended to delete typographical errors in accordance with the Examiner's much appreciated suggestions.

With the above amendments, it is submitted that the claim objections have been dealt with.

Provisional Obviousness-Type Double Patenting Rejection

The Examiner provisionally rejects Claims 1, 2, 4-6, 8-12, 14-19 and 21 on the ground of nonstatutory obviousness-type double patenting over claims 1, 2, 4-12, 14, 15, 17-20 and 26 of Application Serial No. 10/988,304.

As shown by the attached Exhibit 1, the Office issued a Notice of Abandonment of Application Serial No. 10/988,304 on July 10, 2008. Hence, it is submitted that this provisional rejection is moot and should, therefore, be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 103(a)

The Examiner rejects Claims 1, 2, 4, 5, 8, 11, 12, 14-19 and 21-23 on the ground of being unpatentable over U.S. Patent No. 6,701,521 (McLlroy et al.) in view of U.S. Patent Application Publication No. 2002/0010652 (Deguchi).

Claim 1 recites, *inter alia*, failing to find the received vendor identifier at the host system and responsively downloading the program associated with the received hardware identifier over the communication channel from the host system to the target system.

The Examiner admits (Office Action, page 13) that McLlroy et al. does not teach or suggest failing to find a received vendor identifier at a host system.

As such, McLlroy et al. must also not teach or suggest failing to find a received vendor identifier at a host system **and** ***responsively*** downloading a program associated with a received hardware identifier over a communication channel from such host system to a target system.

Deguchi discloses that music vendors are selected and displayed for purchase of bookmarked music clips, which music vendors correspond to the actual music vendors of music marker devices. By tracking music vendor information corresponding to the music marker devices sold by the music vendors, when the user of the music marker device decides to purchase a music CD or audio cassette for the bookmarked music clip, the user may be directed to a web site or contact information for the music vendor from which the user purchased the music marker device. Accordingly, preference may be given to music vendors which, in addition to selling music CDs and audio cassettes of broadcast music, offer for sale the music marker devices which, the users may operate to bookmark broadcast music clips.

Deguchi further discloses (¶70; Figure 15) that if at step 1540 server terminal 105 (Figure 1) does not find a matching music vendor ID in music vendor ID database 864 (Figure 12) corresponding to the music marker device ID, then at step 1580, server terminal 105 is configured to retrieve from music clip playlist database 862 (Figure 10) information corresponding to the bookmarked music clips and to transmit the retrieved information to user terminal 103 (Figure 1). Thereafter, at step 1590, server terminal 105 is configured to update user music title playlist database 863 (Figure 11) to update stored information corresponding to the bookmarked music clips for the particular music marker device user.

A prior art reference must either be in the field of applicants' endeavor or, if not, then must be reasonably pertinent to the particular problem with which the applicants

were concerned, in order to be relied upon as a basis for rejection of the claimed invention. *See In re Oetiker*, 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992).

Deguchi is clearly nonanalogous art. The field of Applicants' endeavor (specification, p. 1, ll. 6-9) pertains generally to downloading a ***program*** from a host system to a target system and, more particularly, to a method for selecting a ***program*** for downloading. Deguchi deals with bookmarked music clips, music marker devices, music CDs and audio cassette music. Deguchi, which discloses that an electronic music marker device tracking system may be embodied as a computer program developed using an object oriented language, does not teach or suggest any downloading of a ***program*** from a host system to a target system, or any method for selecting a ***program*** for downloading as understood by those of ordinary skill in the art. Hence, the first test of *In re Oetiker* is clearly not met.

Second, Deguchi is not reasonably pertinent to the particular problem with which the Applicants were concerned. Applicants' particular problem concerns employing a received vendor identifier to select a ***program*** for download from a host system to a target system, associating a vendor with the target system, employing the vendor identifier, which identifies the vendor, and failing to find the received vendor identifier at the host system and responsively downloading a ***program*** associated with a received hardware identifier over a communication channel from the host system to the target system.

In complete contrast, Deguchi concerns whether server terminal 105 (Figure 1) does not find a matching music vendor ID in music vendor ID database 864 (Figure 12) corresponding to the music marker device ID, and, then at step 1580 (Figure 15), server terminal 105 retrieves from music clip playlist database 862 (Figure 10) information corresponding to the bookmarked music clips and transmits the retrieved information to user terminal 103 (Figure 1). Again, this concerns downloading bookmarked music clip information as opposed to downloading a ***program***. Moreover, the music vendor ID concerns a vendor of music and/or a vendor of an electronic music marker device 101 (Figures 1 and 3) rather than a vendor associated with a ***target system***, such as user terminal 103 (Figure 1). Hence, this clearly does not constitute matter that logically would have commended itself to an inventor's attention in considering his problem. *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 U.S.P.Q.2d 1767 (Fed. Cir. 1993). Accordingly, the second test of *In re Oetiker* is not met.

Therefore, it is submitted that Deguchi cannot reasonably be relied upon as a basis for rejection of the claimed invention.

Even if the Examiner might hold that Deguchi is analogous art, although this is not admitted, then the following additional remarks are provided in connection with Claim 1.

Deguchi, which discloses (Figure 15) that server terminal 105 (Figure 1) does not find a matching music vendor ID in music vendor ID database 864 (Figure 12) corresponding to a music marker device ID of music marker device 101 (Figure 1), and which retrieves from music clip playlist database 862 information corresponding to the bookmarked music clips and transmits the retrieved information to user terminal 103, does not teach or suggest failing to find a received vendor identifier at a host system ***and responsively*** downloading a ***program*** associated with a ***received hardware identifier*** over a communication channel from a host system to a target system.

McLlroy et al. adds nothing to Deguchi regarding such ***responsively*** downloading a program associated with a received hardware identifier.

Therefore, for the above reasons, Claim 1 patentably distinguishes over the references.

Claims 2, 4, 5, 8 and 23 depend from Claim 1 and patentably distinguish over the references for at least the same reasons.

Claim 11 is an independent claim, which recites, *inter alia*, that a loader routine is further adapted, after failing to find a received vendor identifier at a host system, to responsively download a program associated with a received hardware identifier over a communication channel from a host system to a target system.

The Examiner admits (Office Action, page 20) that McLlroy et al. does not teach or suggest failing to find a received vendor identifier at a host system.

As such, McLlroy et al. must also not teach or suggest that a loader routine is further adapted, after failing to find a received vendor identifier at a host system, to ***responsively*** download a program associated with a received hardware identifier over a communication channel from a host system to a target system.

Deguchi is not reasonably pertinent to the particular problem with which the Applicants were concerned. Applicants' particular problem concerns a received vendor identifier to select a ***program*** for download from a host system to a target system, a vendor identifier representing a vendor associated with the target system, the vendor identifier identifies the vendor, and a loader routine is adapted, after failing to find the received vendor identifier at a host system, responsively downloads a ***program*** associated with a received hardware identifier over a communication channel from a host system to a target system.

In complete contrast, Deguchi concerns whether server terminal 105 (Figure 1) does not find a matching music vendor ID in music vendor ID database 864 (Figure 12) corresponding to the music marker device ID, and, then at step 1580 (Figure 15), server terminal 105 retrieves from music clip playlist database 862 (Figure 10) information corresponding to the bookmarked music clips and transmits the retrieved information to user terminal 103 (Figure 1). Again, this concerns downloading bookmarked music clip information as opposed to downloading a ***program***. Moreover, the music vendor ID concerns a vendor of music and/or a vendor of an electronic music marker device 101 (Figures 1 and 3) rather than a vendor associated with a ***target system***, such as user terminal 103 (Figure 1). Hence, this clearly does not constitute matter that logically would have commended itself to an inventor's attention in considering his problem. *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 U.S.P.Q.2d 1767 (Fed. Cir. 1993). Accordingly, the second test of *In re Oetiker* is not met. As was discussed, above, in connection with Claim 1, the first test of *In re Oetiker* is also not met.

Therefore, it is submitted that Deguchi cannot reasonably be relied upon as a basis for rejection of the claimed invention.

Even if the Examiner might hold that Deguchi is analogous art, although this is not admitted, then the following additional remarks are provided in connection with Claim 11.

Deguchi, which discloses (Figure 15) that server terminal 105 (Figure 1) does not find a matching music vendor ID in music vendor ID database 864 (Figure 12) corresponding to a music marker device ID of music marker device 101 (Figure 1), and which retrieves from music clip playlist database 862 information corresponding to the bookmarked music clips and transmits the retrieved information to user terminal 103, does not teach or suggest that a loader routine is further adapted, after failing to find a received vendor identifier at a host system, to ***responsively*** download a ***program*** associated with a ***received hardware identifier*** over a communication channel from a host system to a target system.

McLlroy et al. adds nothing to Deguchi regarding such ***responsively*** downloading a program associated with a received hardware identifier.

Therefore, for the above reasons, Claim 11 patentably distinguishes over the references.

Claims 12, 14-19, 21 and 22 depend either directly or indirectly from Claim 11 and patentably distinguish over the references for at least the same reasons.

The Examiner rejects Claim 6 on the ground of being unpatentable over McLlroy et al. in view of U.S. Patent No. 6,496,979 (Chen et al.) and U.S. Patent No. 5,860,012 (Luu).

Claim 6 is an independent claim, which recites, *inter alia*, failing to find a file at a host system and responsively downloading a program associated with a received hardware identifier over a communication channel from a host system to a target system.

The Examiner admits (Office Action, page 28) that McLlroy et al. does not teach or suggest failing to find a file at a host system.

As such, McLlroy et al. must also not teach or suggest failing to find a file at a host system **and** ***responsively*** downloading a program associated with a received hardware identifier over a communication channel from a host system to a target system.

It is submitted that Chen et al. adds nothing to McLlroy et al. regarding this refined recital. The Examiner apparently implicitly concedes this point at pages 28 and 29 of the Office Action and relies upon Luu, as is discussed below.

Luu discloses (column 5, lines 31-35) a personality file, which allows for custom installation of application software on a user workstation. For example, if the application is to be installed in a particular directory, it is specified through the personality file. A custom personality file resides on the user workstation. In operation, the installation program on the user workstation will search for the custom personality file. If no custom personality file is found, a default personality file will be utilized to perform the installation.

Luu, which discloses that if no custom personality file is found, a default personality file will be utilized to perform an installation, does not teach or suggest failing to find a file at a host system and ***responsively*** downloading a program ***associated with a received hardware identifier*** over a communication channel from a host system to a target system.

McLlroy et al. and Chen et al. add nothing to Luu regarding such ***responsively*** downloading a program associated with a received hardware identifier.

Therefore, for the above reasons, Claim 6 patentably distinguishes over the references.

The Examiner rejects Claim 9 on the ground of being unpatentable over McLlroy et al. in view of Deguchi and further in view of Chen et al. and U.S. Patent No. 6,151,643 (Cheng et al.).

Claim 9 depends from Claim 1 and patentably distinguishes over McLlroy et al. and Deguchi for at least the same reasons.

It is submitted that Chen et al. and/or Cheng et al. add nothing to McLlroy et al. and Deguchi to render Claim 1 unpatentable.

Furthermore, Claim 9 recites associating a version number with each of the plurality of programs; storing the plurality of identifiers in a file at the host system; associating one of the plurality of identifiers in the file at the host system with one of the plurality of programs having the version number for the one of the plurality of programs; and updating the file to associate such one of the plurality of identifiers with a new program, which is different than the plurality of programs, and which has a new version number, which is different than the version number.

The Examiner admits (Office Action, page 30) that McLlroy et al. and Deguchi do not teach or suggest storing a plurality of identifiers in a file at a host system, and updating such file to associate one of such plurality of identifiers with a new program, which is different than a plurality of programs, and which has a new version number, which is different than a version number (for one of the plurality of programs).

The Examiner takes the position (Office Action, page 30) that Chen et al. discloses storing the plurality of identifiers in a file at a host system. This statement is respectfully traversed in view of the disclosure of Chen et al..

Chen et al. discloses (column 14, lines 39-48) at step 164 in Figure 8, that an application manager module 12 displays a user interface such as illustrated in Figure 9 at 163. The user interface 163 includes a list 165 of available application programs stored as application setup package files in a store 8 (Figure 1). The user interface also displays suitable identifiers 167 (Figure 9) that can be selected by the user to indicate to add or remove each application from the mobile device 3. In the embodiment illustrated, the user can install or uninstall the application by checking or unchecking the associated identifier 167 for each application.

Clearly, Chen et al., which concerns identifiers 167 of a user interface display, adds nothing to McLlroy et al. and Deguchi regarding storing a plurality of identifiers in a ***file*** at a host system.

The Examiner argues (Office Action, page 30) that McLlroy et al. (column 13, lines 22-29) discloses associating one of a plurality of identifiers "in said file at the host system" with one of a plurality of programs having a version number for such one of the plurality of programs. Clearly, this cannot be since the Examiner admits (Office Action, page 30) that McLlroy et al. does not teach or suggest storing a plurality of identifiers in a file at a

host system. Furthermore, it is submitted that Chen et al. and Deguchi add nothing to McLlroy et al. regarding storing a plurality of identifiers in a ***file*** at a host system.

The Examiner takes the position (Office Action, page 31) that Cheng et al. discloses updating a file to associate one of a plurality of identifiers with a new program, which is different than a plurality of programs, and which has a new version number, which is different than the version number.

Cheng et al. discloses (column 10, lines 26-32) that an update database 709 component maintains information identifying a large number of software products, information about software updates that are available from diverse software product vendors for these software products, information for identifying software products installed on a client computer 101, and for uniquely distinguishing the versions and names of installed software products.

Figure 8 of Cheng et al. shows the update database 709 as a schema for a relational database. The update database 709 includes a method table 801, a software product locator table 803, a software product table 805, and an update table 807. The software product locator table 803 associates individual scan strings 813 with a software product name 815, instructions 816 for determining a version number or release number, and one or more constraints 814. A software update is applicable to a client computer 101 if the version of the software update is more recent than the version of the installed software product. Since not all of the software products installed on a client computer 101 need to be updated, the determination of the applicable software updates is made with the software product table 805. The software product table 805 associates a software product name 815 and a particular release 818 with an update ID 819 identifying a software update for that version of the software product. The new version number 820 specifies the new version that would be produced by applying the software update specified by the update ID 819 to the software product identified by the software product name and release number. The latest field 821 specifies (Y/N) whether applying the software update would bring the software product to its most up-to-date version.

Cheng et al. does not teach or suggest ***updating*** the recited ***file*** of Claim 9, which stores the recited plurality of identifiers, in order to associate the recited one of the plurality of identifiers with a new program.

Cheng et al. also adds nothing to Chen et al., Deguchi and McLlroy et al. regarding storing a plurality of identifiers in a ***file*** at a host system.

Therefore, for the above reasons, Claim 9 further patentably distinguishes over the references.

Claim 10 depends from Claim 1 and patentably distinguishes over the references for at least the same reasons.

Summary and Conclusion

The prior art made of record and not relied upon but considered pertinent to Applicants' disclosure has been reviewed.

In summary, it is submitted that Claims 1, 2, 4-6, 8-12, 14-19 and 21-23 are patentable over the references of record.

Reconsideration and early allowance are requested.

Respectfully submitted,

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